Supreme Court, U.S.
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No. 97-216

In The
Supreme Court of the United States
October Term, 1996

THE KIOWA TRIBE OF OKLAHOMA
a federally recognized Indian Tribe,
Petitioner,

vs.

AIRCRAFT EQUIPMENT COMPANY
an Oklahoma Partnership, et al.,
Respondents.

On Petition for a Writ of Certiorari to the Oklahoma Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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August, 1997

QUESTIONS PRESENTED FOR REVIEW

1. Does the reachability of an indian tribe's severance (gross production) taxes, extracted from oil companies, by proceedings in aid of execution of a state court judgment against it contravene the exercise by it of its power to regulate its membership or its internal and social affairs?

2. Does the judgment of Respondent Aircraft Equipment Company have priority over an unfiled, unasserted purported lien?

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STATEMENT OF THE CASE

Aircraft Equipment Company ("Aircraft") recovered a money judgment against The Kiowa Tribe of Oklahoma ("Kiowa" or "tribe") in the District Court of Oklahoma County, Oklahoma. The judgment was affirmed by the Oklahoma Supreme Court[1] and is now final.

The case at bar was instituted as a creditor's bill in aid of execution of the underlying judgment. The creditor's bill is in the nature of an equitable garnishment to reach money or property belonging to the judgment debtor in the hands of a third party and subject it to the satisfaction of the judgment[2].

The money in issue is an oil and gas severance tax imposed by Kiowa on *energy companies* which purchase oil, gas and other minerals from properties owned by Kiowa or its members. It is the functional equivalent on the gross production tax levied by the State of Oklahoma on *royalty owners* of non-indian land which is collected by energy companies purchasing oil, gas or other minerals therefrom and remitted to the state[3].

The decision of the district court did not adjudicate the existence or priority of the judgment creditor's execution vis-a-vis the purported lien of Kiowa. In this, it

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[1] 921 P.2d 359 (Okl. 1996)

[2] 12 O.S. §841

[3] 68 O.S. §§1001, 1007, and 1008.

should be noted that Kiowa did not attempt to foreclose the purported lien in this action but only sought recognition of its existence[4].

REASONS FOR DENYING THE WRIT
THE REVENUES OF AN INDIAN TRIBE MAY BE SUBJECTED TO PROCEEDINGS IN AID OF EXECUTION OF A STATE COURT MONEY JUDGMENT

Aircraft asserts that when two or more indians associate themselves for profit and speculation they are the functional analogue of a taxi-cab drivers union (or any other membership organization, incorporated or unincorporated) and may not be granted impunity (sovereign or otherwise) from the exercise of non-discriminatory state laws. The tribe desires to exempt revenues from garnishment. The theory is that it has immunity from state court action by reason of sovereignty.

The sovereign immunity sought by the tribe is more narrow than that desired by the tribe. *Santa Clara Pueblo, et al. v. Martinez*, 436 U.S. 49, 56 L.Ed.2d 106, 98 S.Ct. 1670, is most often cited for the proposition that an indian tribe cannot be sued unless it has waived sovereign immunity. Close examination, however, reveals that

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4 The pertinent portion of the Answer of the tribe herein is, "It is the Tribe's intent to enforce its law, up to and including foreclosure of its lien, if it does not receive its severance tax pursuant to its ordinance."

a female member of the Santa Clara Pueblo, a tribe, and her daughter brought the action for declaratory and injunctive relief against the tribe claiming an ordinance of the tribe denying tribal membership to the children of female tribe members who married outside the tribe, while extending membership to the children of male members who married outside the tribe, violated Title I of the Indian Civil Rights Act, 25 U.S.C.S. Section 1301-1303. The Court held that the action was barred by the sovereign immunity of indian tribes.

This is *not inconsistent* with the expressions of United States Supreme Court that indian tribes, while losing powers inconsistent with their dependent, domestic status, retain the powers over tribal membership and tribal lands[5].

It is interesting to note that the majority, in *Santa Clara*, supra, at page 56, acknowledged that while the tribes are "no longer 'possessed of the full attributes of sovereignity', they remain a 'separate people, with the power of regulating their internal and social relations,'" citing *United States v. Wheeler*, 435 U.S. 313, 55 L.Ed.2d 303, 98 S.Ct. 1079, where at page 323, the Court states:

> "We have recently said: 'Indian tribes are unique aggregations possessing attributes of sovereignty over both their *members* and their *territory* . . .'". (emphasis added)

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5 *United States v. Wheeler*, infra.

Little note has been taken of the syllabus in *Martinez*, supra:

> "Indian tribes are distinct, independent political communities retaining their original natural right in matters of local self-government: although no *longer possessed of the full attributes of sovereignty*, they remain a separate people, with the power of regulating their *internal* and *social affairs*." (emphasis added)

Moreover, *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 36 L.Ed.2d, 114, 119, 93 S.Ct. 1267, reasons:

> "But tribal activities conducted outside the reservation present different considerations. State authority over indians is yet more extensive over activities . . . not on any reservation. *Organized Village of Kake*, supra, at 75, 7 L.Ed.2d 573. Absent express federal law to the contrary, indians going beyond reservation boundaries have generally been held subject to non-discriminatory state laws otherwise applicable to all citizens of the State . . ."

In citing *Oklahoma Tax Commission v. Citizens Bank Pottawatomie Indian Tribe of Oklahoma*, 498 U.S. 505, 111 S.Ct. 905, 112 L.Ed.2d 1112 (1991), the tribe ignores Justice Stevens' concurring opinion:

> "Nevertheless, I am not sure that the rule of tribal sovereign immunity extends to cases arising from a tribe's conduct of commercial activity outside its own territory."

Kiowa chose to venture in a business enterprise for profit. It must pay its debt. No membership or self-government is involved.

Any attempt to expand the rule of law of *Santa Clara Pueblo v. Martinez,* supra, and its progeny to matters other than *internal* and *social* affairs is inconsistent with other opinions involving extra-tribal, external, off-reservation business enterprises.

In *Rice v. Rehner,* 463 U.S. 713, L.Ed.2d. 961, 103 S.Ct. 3291, the United States Supreme Court stated, in part:

> ". . . our recent cases have established a 'trend . . . away from the idea of inherent indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-exemption.' . . . we have instead employed a pre-emption analysis that is informed by historical notions of tribal sovereignty, rather than determined by them."

Otherwise stated, if there is no immunity, there is nothing to waive. The claim here rises no higher than a claim of impunity.

Pursuing the *Rice v. Rehner,* supra, rationale it is reasonable to state:

"Indian tribes do not tax to exist and do not exist to tax."

The subjection of income, from whatever source derived, to non-discriminatory state laws (i.e., garnishment) cannot be said to infringe on tribal self-government. It does not interfere with the power of the tribe to regulate its *internal* and *social* affairs; *Martinez,* supra.

The enforcement of the underlying judgment against tribe's revenues derived from the imposition of a tax on

purchasers against the proceeds of oil and gas produced from property owned by individual indians poses no threat to the tribe's self-government and does not affect the tribe's assets on indian land. It is not an execution as may be proscribed by 28 U.S.C. Section 1602, et. seq. (referred to as the "Foreign Sovereign Immunities Act of 1975" which is confined to "foreign states" by definition).

The Opinion of Mr. Justice Frankfurter in *Organized Village of Kake v. Egan*, 369 U.S. 60, 7 L.Ed.2d 573, 82 S.Ct. 562 dealt, inter alia, with the power of the State (Alaska) to regulate off-reservation fishing by indians and is helpful in the analysis of the issue herein. Justice Franfurter, after analyzing the legislative history of the statehood bills[6] with respect to retention of federal power over indian lands stated:

> "As the United States spread westward, it became evident that there was no place where the indians could be forever isolated. In recognition of this fact the United States began to consider the indians less as foreign nations and more as a part of our country . . .
>
> The general notion drawn from Chief Justice Marshall's opinion in *Worcester v. Georgia*, (US) 6 Pet. 515, 561, 8 L.Ed. 483, 501; . . . that an indian reservation is a distinct nation within whose

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6 The Court compared the Oklahoma "Statues" that provided that Indian lands should remain "subject to the jurisdiction, disposal and control of the United States." See: Art. 1, Sec. 3, Oklahoma Constitution.

> boundaries state law cannot penetrate, has yielded to closer analysis when confronted, in the course of subsequent developments, with diverse concrete situations. By 1880 the Court no longer viewed reservations as distinct nations. On the contrary, it was said that a reservation was in many cases a part of the surrounding State or Territory, and subject to its jurisdiction except as forbidden by federal law . . .

Concurrently, the influence of state law increased rather than decreased . . .

> During the 1940's several states were permitted to assert criminal jurisdiction . . .
>
> In 1953, Congress granted to several states full civil and criminal jurisdiction over indian reservations . . .
>
> The applicability of state law, we there said, depends upon "whether the state action infringed on the right of reservation indians to make their own laws and be ruled by them," 358 U.S., at 220 . . .
>
> But State regulation of off-reservation fishing certainly does not impinge on treaty-protected reservation self-government, the factor found decisive in *Williams v. Lee.*"

The principles enunciated by the unanimous Court in *Kake*, supra, were extended to the right of a State (New Mexico) to impose a tax on the gross receipts of a ski resort owned and operated by an indian tribe off reservation. In *Mescalero Apache Tribe v. Jones*, supra, the Supreme Court stated:

> "But Tribal activities conducted outside the reservation present different considerations. "State au-

thority over Indians is yet more extensive over activities . . . not on any reservation." *Organized Village of Kake*, supra, at 75, 7 L.Ed.2d 573. Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally [411 U.S. 149] been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State. See, e.g., *Puyallup Tribe v. Department of Game*, 391 U.S. 392, 398, 20 L.Ed.2d 689, 88 S.Ct. 1725 (1968); *Organized Village of Kake*, supra, at 75-76, 7 L.Ed.2d 573; *Tulee v. Washington*, 315 U.S.681, 683, 86 L.Ed. 115, 62 S.Ct. 862, (1942); *Shaw v. Gibson-Zahniser Oil Corp.*, 276 U.S. 575, 72 L.Ed. 709, 48 S.Ct. 1075 (1896). That principle is a relevant to a State's tax laws as it is to state criminal laws, see *Ward v. Race Horse*, supra, at 516, 41 L.Ed. 244, and applies as much to tribal ski resorts as it does to fishing enterprises. See *Organized Village of Kake*, supra."

The Court, in *Jones*, supra discussed the "back drop" of the Indian Reorganization Act of 1934, stating:

"The Indian reorganization Act of 1934 neither requires nor counsels us to recognize this tribal business venture as a federal instrumentality. Congress itself felt it necessary to address the immunity question and to provide tax immunity to the extent it deemed desirable. There is, therefore, no statutory invitation to consider projects undertaken pursuant to the Act as federal instrumentalities generally and automatically immune from state taxation. Unquestionable, the Act reflected a new policy of the Federal Government and aimed to put a halt to the loss of tribal lands through allotment. It gave the Secretary of Interior power to create new reservations, and tribes were encouraged to revitalize their self-government through

the adoption of constitutions and bylaws and through the creation of chartered corporations, with power to conduct the business and economic affairs of the tribe. As was true in the case before us, a tribe taking advantage of the Act might generate substantial revenues for the education and the social and economic welfare of its people. So viewed, an enterprise such as the ski resort in this case serves a federal function with respect to the Government's role in Indian Affairs. But the "mere fact that property is used, among others, by the United States as an instrument for effecting its purpose does not relieve it from state taxation." *Choctaw, Oklahoma & Gulf R. Co. v. Mackey*, 256 U.S. 531, 536, 65 L.Ed. 1076, 41 S.Ct. 582 (1921) (Other citations omitted).

The intent and purpose of the Reorganization Act was "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." . . . The Reorganization Act did not strip Indian tribes of their reservation lands of their historic immunity from state and local control. But, in the context of the Reorganization Act, we think it unrealistic to conclude that Congress conceived of off-reservation tribal enterprises "virtually as an arm of the Government" . . . on the contrary, the aim was to disentangle the tribes from the official bureaucracy. The Court's decision in *Organized Village of Kake*, supra, which involved tribes organized under the Reorganization Act, demonstrates that off-reservation activities are within the reach of state law . . . What was said in *Shaw v. Gibson-Zahniser Oil Corp.*, 276 U.S. 5675, 72 L.Ed. 709, 48 S.Ct. 333 (1928), is relevant here. At issue there was the taxability of off reservation Indian land purchased with consent of the Secretary of Interior

with the accumulated royalties from the individual Indian's restricted allotted lands. Alienation of the purchased lands was federally restricted. In rejecting a claim that state taxation of the land was barred by the federal-instrumentality doctrine, the then Mr. Justice Stone wrote for a unanimous Court:

"What governmental instrumentalities will be held free from state taxation, though Congress has not expressly so provided, cannot be determined apart from the purpose and character of the legislation creating them . . .

"The early legislation affecting the Indians had as its immediate object the closest control by the government of their lives and property. The first and principal need then was that they should be shielded alike from their own improvidence and the spoilation of others but the ultimate purpose was to give them the more independent and responsible status of citizens and property owners . . .

In a broad sense all land which the Indians are permitted to purchase out of the taxable lands of the state in this process of their emancipation and assumption of the responsibility of citizenship, whether restricted or not, may be said to be instrumentalities of that process. But . . . [t]o hold them immune would be inconsistent with one of the [411 U.S.155] very purposes of their creation, to educate the Indians in responsibility . . ."

We accordingly decline the invitation to resurrect the expansive version of the intergovernmental-immunity doctrine that has been so consistently rejected in modern times.

The Tribe's broad claims of tax immunity must therefore be rejected. But, there remains to be

> considered the scope of the immunity specifically afforded by §5 of the Indian Reorganization Act. 25 U.S.C. §465 . . [25 U.S.C.S. §465].
>
> But, absent clear statutory guidance, courts ordinarily will not imply tax exemptions and will not exempt off-reservation income from tax simply because the land from which it is derived, or its other source, is itself exempt from tax.
>
> This Court has repeatedly said that tax exemptions are not granted by implication . . . It has applied that rule to taxing acts affecting Indians as to all other . . . If Congress intends to prevent the State of Oklahoma from levying a general non-discriminatory estate tax applying alike to all its citizens, it should say so in plain words. Such a conclusion cannot rest on dubious inference. *Oklahoma Tax Comm'n v. United States*, 319 U.S., at 606-607, 87 L.Ed. 1612 . . . Here, the rights and land were acquired by the Tribe beyond its reservation borders for the purpose of carrying on a business enterprise as anticipated by §476 and 477 of the Act. These provisions are designed to encourage tribal enterprises "to enter the white world on a footing of equal competition" . . . . . In this context, we will not imply an expansive immunity from ordinary income taxes that businesses throughout the State are subject to. We therefore [411 U.S. 158] hold that the exemption in §465 does not encompass or bar the collection of New Mexico's nondiscriminatory Gross Receipts Tax and that the Tribe's ski resort is subject to that tax . . ."

What has been said with respect to a non-discriminatory state tax above can be said with respect to a non-discriminatory proceeding in aid of execution of a state court money Judgment.

NEITHER THE STATE OF OKLAHOMA NOR THE UNITED STATES OF AMERICA IS IMMUNE FROM THE PAYMENT OF ITS DEBT

The rationale requiring the State of Oklahoma to pay its debts is equally applicable to the tribe in the case at bar.

In *Lawrence v. Patton*, 710 P.2d 108 (Okl. 1985), the Oklahoma Supreme Court relaxed the doctrine of a *state's sovereign* immunity in actions based on contract, even without a valid appropriation to fund the contract entered into by the state.

Further, in *State Bd. of Pub. Affairs v. Principal Funding Corp.*, Okla. 542 P.2d 503, the court stated:

"We find no justifiable reason why the State should secure to itself the benefits of a contract without assuming the corresponding liabilities. In our opinion the doctrine of sovereign immunity should not be applicable in cases where State has entered into a valid contract and an individual or entity seeks redress for breach of the State's contractual obligations."

Notwithstanding, there is no "Indian Country", reservation, allotment or royalty, bonuses, rents or tribal members' income involved.

The severance tax is not a gross receipt derived by the United States from any contract which might be otherwise exempt under any law, e.g., 25 U.S.C. §459d(b). If a state may reach gross receipts of a ski resort off-reservation

(Mescalero Apache Tribe v. Jones, supra) there is no rationale for exempting monies owing to a tribe by oil companies derived from "off-reservation" activities from the exercise of state court proceedings in aid of execution of a state court money judgment.

The revenue enjoys no more protection than the income of any commercial enterprise.

The court's attention is invited to *United States Petitioner v. Winstar Corporation, et al.,* 135 L.Ed.2d 964, 116 S.Ct. 2432, _____ U.S. _____. The issue was the enforceability of contracts between the government (U.S.) and participants in a regulated industry.

The plurity stated:

> "We took this case to consider the extent to which special rules, not generally applicable to private contracts, governing the enforcement of governmental contracts at issue here. We decide whether the government may assert for special defenses to respondents' claims for breach: the canon of contract construction that surrenders of sovereign authority must appear in unmistakable terms, *Bowen v. Public Agencies Opposed to Social Security Entrapment,* 477 U.S. 41, 52 (1986); the rule that an agents authority to make such surrenders must be delegated in express terms, *Home Telephone & Telegraph Co. v. City of Los Angeles,* 211 U.S. 265 (1908); the doctrine that a government may not, in any event, contract to surrender certain reserved powers, *Stone v. Mississippi,* 101 U.S. 814 (1880); and finally, the principle that a Government's sovereign acts do not give rise to a claim for breach of

> contract, *Horowitz v. United States*, 267 U.S. 458, 460 (1925)."

This honorable court concluded that the government is liable for breach of contract, notwithstanding sovereign immunity. Aircraft urges upon the court the principles enunciated in footnote 39 *of Winstar* from *United States v. Bostwick*, 94 U.S. 53, 66 (1877):

> "The United States, when they contract with their citizens, are controlled by the same laws that govern the citizens in that behalf,"

and *Cooke v. United States*, 91 U.S. 389, 398, explaining that when the United States

> ". . . comes down from its position of sovereignty, and enters the domain of commerce, it submits itself to the same laws that govern individuals there."

The Respondent asserts that, by analogy, there is no "immunity" of which the Petitioner has been deprived and the payment of the judgment would not contravene Kiowa's regulation of its membership or social and internal affairs.

THE PURPORTED LIEN OF TAX AGAINST APPELLEE OIL COMPANIES HAS NOT BEEN VITIATED BY THE EQUITABLE GARNISHMENT

The decision of the district court did not adjudicate the priority of the judgment creditor's execution vis-a-vis the purported lien of the tribe. In this, it should be

noted that the tribe did not attempt to foreclose the purported lien in this action but only sought the recognition of its existence.

The "injunction", "restraining the tribe from enforcing its lien against the defendant oil companies herein" merely held in abeyance the recognition of the priority of the proceedings in aid of execution (creditor's bill) over any attempt by the tribe to exercise whatever rights it possessed under its ordinance.

The subjection of the revenues derived from taxing oil companies to the satisfaction of the judgment does not vitiate or invalidate the purported lien nor does interfere with tribal self-government.

There is a clear analogy here to what has been said in *Mescalero Apache Tribe v. Jones*, supra, with respect to taxation by New Mexico of off-reservation revenues. The United States Supreme Court, in *Jones*, supra, said in pertinent part:

> "Here, the rights and land were acquired by the Tribe beyond its reservation borders for the purpose of carrying on a business enterprise . . . These provisions are designed to encourage tribal enterprises 'to enter the white world on a footing of equal competition' . . . In this context, we will not imply an expansive immunity from ordinary income taxes that businesses throughout the State are subject to . . ."

The right of the tribe to tax, while a "necessary instrument of self-government and territorial management",

does not excuse or exempt the tribe from the application to it of non-discriminatory state laws subjecting its off-reservation income, from whatever source derived (levies or enterprise income) to the payment of its debts.

There is no historical backdrop of immunization for such revenues. There is no federal pre-emption affecting such revenues. The tribe and Aircraft are on equal footing.

THE AUTHORITIES CITED BY APPELLANT DO NOT WARRANT THE RELIEF SOUGHT

Merrion v. Jicarilla Apache Tribe, 455, U.S. 130, 71 L.Ed.2d 21, 102 S.Ct. 894.

The contest was over severance taxes imposed on oil and natural gas severed, saved and removed from the Jicarilla Apache Tribe *reservation* in northwestern New Mexico. Two characteristics distinguish this case from the case at bar: first, the on/off reservation dichotomy and second, the Jicarilla tribe is organized under the Indian Reorganization Act of 1934, Ch. 596, 48 Stat. 984, 25 U.S.C. §461 et seq. Neither characteristic are akin to the tribe herein. Nevertheless, that case merely permits the imposition of the severance tax for extraction *on* reservation.

The decision in *Jicarilla*, supra, is not authority for exempting such revenues from the payment of the tribe's

debt.

Of significance is the recent case of *Oklahoma Tax Commission v. Chickasaw Nation*, 115 S.Ct. 2214 (1995). The U.S. Supreme Court permitted Oklahoma to tax the wages that (1) the Tribe pays (2) to members of the Tribe (3) who work for the Tribe (4) within Inidan country, but (5) who live outside Indian country, and, apparently commute to work.

The significance is *only* to point out that:

> "Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State"; *Mescalero Apache Tribe v. Jones*, supra.

The revenues sought to be subjected to the proceedings in aid of execution are not derived from *on* reservation activities.

IF A CONFLICT BETWEEN JURISDICTIONS EXISTS, IT IS THE CONFLICT OF THE COURT OF APPEALS FOR THE TENTH CIRCUIT WITH THIS COURT'S JURISPRUDENCE ON THE AMENABILITY OF AN INDIAN TRIBE TO STATE COURT JURISDICTION

The United States Supreme Court has reviewed the tradition of sovereignty and Mr. Justice Rhenquist found that no immunity for off-reservation activities had traditionally been recognized (concurring in part and dis-

cases have recognized that tribal sovereignty contains a 'significant geographical component,' " citing *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 65 L.Ed.2d 665.

THE DOCTRINE OF INDIAN SOVEREIGN IMMUNITY DOES NOT INSULATE A TRIBE FROM THE EXERCISE OF NON-DISCRIMINATORY STATE COURT JURISDICTION TO ENFORCE A STATE COURT MONEY JUDGMENT AGAINST IT

The case of *Little Horn State Bank v. Stops,* (Montana 1976, 555 P.2d 211, cert. denied, 431 U.S. 924, 97 S.Ct. 2198, 53 L.Ed.2d 238) supports the foregoing Proposition. The court stated:

> "Respondents, members of the Crow Indian Tribe residing on the Crow Indian Reservation, obtained a loan from appellant bank located in Hardin, Montana, and failed to repay the loan. This commercial transaction took place at the bank *which is located outside the exterior boundaries of the Crow Indian Reservation.* Process was served upon respondents on the reservation. Thereafter appellant obtained a judgment in the district court of the thirteenth judicial district in the amount of $3,541.24. Following this judgment on February 18, 1976, execution was issued by the district court on February 23, 1976. The writ of execution was directed to the sheriff of Big Horn County, who proceeded to garnish the wages of respondents earned on the reservation but within Big Horn County. Respondents sought and obtained injunctive relief against

the writ of execution. Appellant seeks to dissolve the permanent injunction and be allowed to levy upon the respondents' property and wages within the reservation.

Respondents did not attack the district court's subject matter jurisdiction or personal jurisdiction at the district court level or before this Court. Both of these issues have been laid to rest by *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 147-148, 93 S.Ct. 1267, 1270, 36 L.Ed.2d 114, 119, and *Bad Horse v. Bad Horse*, 163 Mont. 445, 517 P.2d 893, cert. den. 419 U.S. 847, 95 S.Ct. 83, 42 L.Ed2d 76.

A review of the district court's jurisdiction had no Indian jurisdictional dispute been involved, is useful to this decision. It has been a long standing doctrine that any court having jurisdiction to render a judgment also has the power to enforce that judgment through any order or writ necessary to carry its judgment into effect. *U.S. ex rel. Riggs v. Johnson County*, 6 Wall. 166, 18 L.Ed. 768 (1868); *Pam-to-Pee v. United States*, 187 U.S. 371, 23 S.Ct. 142, 47 L.Ed. 221 (1902); *Hamilton v. Nakai*, 453 F.2d 152, cert. den. 406 U.S. 945, 92 S.Ct. 2044, 32 L.Ed.2d 332.

The United States Supreme Court defined "jurisdiction" 6 Wall. 166, 18 L.Ed. at P. 773 in *Riggs:*

> . . . Jurisdiction is defined to be the power to hear and determine the subject matter in controversy in the suit before the court, and *the rule is universal, that if the power is conferred to render the judgment or enter the decree, it also includes the power to issue proper process to enforce such judgment or decree . . .* ***

Express determination of this court is that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until that

judgment shall be satisfied. ***"

The *Stops*, supra, court held that state action, in the form of a writ of execution to enforce a judgment rendered on a transaction arising outside an indian reservation, does not interfere with the tribe's right to make its own rules and be governed by them; and that a writ of execution from a state court is valid within an indian reservation when such is a means of enforcing a valid judgment of that court. The United States Supreme Court denied certiorari.

CONCLUSION

For reasons cited above, the writ of certiorari should be denied.

Respectfully submitted:

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